

IN THE UNITED STATES DISTRICT COURT
FOR THE MIDDLE DISTRICT OF ALABAMA
NORTHERN DIVISION

MARIE J. HAMMOND,)
)
Plaintiff,)
)
v.) CASE NO. 2:08-CV-1024-WKW[WO]
)
)
MIKE KEEHN, *et al.*,)
)
)
Defendants.)

ORDER

On April 9, 2009, the Magistrate Judge filed a Recommendation in this case. (Doc. # 13.) On April 21, 2009, Plaintiff Marie J. Hammond (“Hammond”) filed an objection. (Doc. # 14.) The court has conducted an independent and *de novo* review of those portions of the Recommendation to which objection is made. *See* 28 U.S.C. § 636(b)(1).

In her objection, Ms. Hammond attempts to provide additional facts with respect to the “white male” who “harrass [sic] and intimated her” and her overtime claim. (Doc. # 14, at 1, 2.) Ms. Hammond’s objection is due to be overruled for two reasons, one procedural and the other substantive. First, to the extent that Ms. Hammond presents new factual assertions, they come too late to revive any of her claims that are the subject of the Magistrate Judge’s recommendation of dismissal.¹ *Cf. Williams v. McNeil*, 557 F.3d 1287, 1292 (11th Cir. 2009) (“[W]e . . . hold that a district court has discretion to decline to consider a party’s argument when that argument was not first presented to the magistrate

¹ It should be pointed out that the Magistrate Judge has given substantial leeway to Ms. Hammond to correct her factually deficient complaint. (Docs. # 5 & 10.)

judge.”). Second, even if Ms. Hammond’s factual assertions were considered, they would be insufficient to cure the complaint’s deficiencies that the Magistrate Judge cited and elaborated upon in his Recommendation.

Accordingly, it is ORDERED as follows:

1. Ms. Hammond’s objection (Doc. # 14) is OVERRULED.
2. The Recommendation (Doc. # 13) is ADOPTED.
3. Ms. Hammond’s claims alleging denial of overtime based upon race, failure to promote, harassment and retaliation are DISMISSED without any further opportunity for amendment, and prior to service, pursuant to the provisions of 28 U.S.C. § 1915(e)(2)(B).
4. Defendant Keehn is DISMISSED from this action without any further opportunity for amendment, and prior to service, pursuant to the provisions of 28 U.S.C. § 1915(e)(2)(B).
5. This case is REFERRED back to the Magistrate Judge for further proceedings on Ms. Hammond’s remaining claims of denial of overtime based upon age and gender.

DONE this 24th day of April 2009.

/s/ W. Keith Watkins
UNITED STATES DISTRICT JUDGE